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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

September 21, 2001
AO-01-23

Representative Peter J. Koutoujian
154 Waltham Street
Newton, MA 02465

Re: Senior Resource Guide

Dear Representative Koutoujian:

This letter is in response to your September 10, 2001 request for an advisory opinion.

You have stated that you have prepared a senior citizen's resource guide that you would like to distribute in Newton and Waltham. You would like to know if you may accept donations from businesses to distribute the guide and if such donations would be treated as "contributions" subject to the campaign finance law. Funds raised and spent to copy and distribute the guide would not be deposited into or spent from your political committee's account.

The purpose of the guide would be to inform seniors in your district. The guide would help seniors organize the information and services that government agencies can provide on a wide range of topics. From housing to health care to transportation, it would help seniors in their search for information and assistance.

You have stated that the purpose of the guide would be to provide better information for seniors in your district, not to bolster your political standing. You are not on the ballot for re-election this November. Your name would appear at the beginning of the packet on a letter from you stating the guide's purpose. Another page would contain phone numbers and contact information for municipal, state and federal elected officials, including information regarding how to contact your office. Your picture may also be in the guide at some point. The businesses and individuals that you would contact to help defray the costs of printing and distribution are largely those who have been active in the public life of Newton and Waltham. The guide would contain a "compliments of" page, listing sponsoring individuals and businesses. You have provided a draft copy of the guide. The contents include a wide range of information, including information on transportation, housing, nutrition, health care, public safety and crime prevention and property tax exemptions and deferrals.

QUESTION

May businesses, particularly businesses that cater to seniors, be solicited for funds to be used to distribute the guide and be listed in the guide as sponsors?

ANSWER

Yes, but care should be taken to avoid use of the guide for political purposes, e.g., it should not be used while campaigning for votes or distributed at campaign events.

DISCUSSION

The campaign finance law states that business corporations may not “directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of . . . promoting or preventing the nomination or election of any person to public office.” See M.G.L. c. 55, § 8. The statute also provides that political committees organized on behalf of a candidate may not “solicit or receive from such corporation . . . any gift, payment expenditure, contribution or promise to give, pay, expend or contribute for any such purpose.” Id.

The office closely scrutinizes any situation involving the potential use of corporate funds to influence candidate elections. See, e.g., AO-93-27 (stating that commissions received by a political committee from a corporation for marketing of telephone services by the committee for the corporation would be prohibited by section 8). As noted in that opinion, “section 8 indicates a deep concern by the Legislature of corporate involvement in *political* fundraising” (emphasis added).

Section 8 does not prohibit the raising and spending of corporate funds for governmental, civic, charitable or other non-political purposes, even if an incidental effect of the activity is to help the political future of a candidate or political party.¹ See AO-83-04, in which the office stated that such a fund could be used to defray certain expenses of a state party convention, including costs associated with welcoming delegates, providing reservation services for delegates, and paying for law enforcement services necessary for the convention. The purpose of the expenditures in that instance was the promotion of the city or the individuals attending, not the interest of the state party committee.

In assessing whether the guide or a similar communication to voters paid for with corporate funds is prohibited by section 8, a court might consider not just the words used, but also the entire context of the communication. See FEC v. Furgatch, 807 F.2d 857, 863 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987), in which the Ninth Circuit held that the context of a communication is helpful in determining whether a communication is express advocacy. In Furgatch the court stated that if a document “when read as a whole, and with limited reference to external events, [is] susceptible to no other reasonable interpretation but [that it is] an exhortation to vote for or against a specific candidate” the communication constitutes express advocacy.

The guide, as presented to us in draft form, contains no express advocacy encouraging a vote for or against a candidate, or any solicitation of contributions to a political campaign, and the context of its distribution does not appear to reflect an effort to “directly or indirectly give . . . any money or other valuable thing for the purpose” of promoting your candidacy.” Therefore, the distribution of the

¹ Under no circumstances may corporate funds be deposited into a candidate’s campaign account.

guide using corporate funds would not appear to violate section 8. Because the business sponsors would be listed, it would seem that their primary purpose in sponsoring the guide would be the enhancement of their own commercial interests.

You should note, however, that there may be circumstances where the manner in which such a guide is printed or distributed could raise the inference that its purpose is primarily to enhance your candidacy. Based on your letter and conversations with your staff with this office it would appear that the content of the guide would not raise that inference. You should avoid distributing the Guide, however, in a manner that might lead a reasonable person to believe that such distribution is intended primarily to enhance your campaign, e.g., if the guide were distributed to voters shortly before an election in which you are on the ballot, at fundraising events or during door-to-door solicitations for votes.

This opinion is solely in the context of M.G.L. c. 55² and is based solely on the representations made in your letter and in conversations with your staff. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS/gb

² Your question may also raise issues under the conflict of interest law, M.G.L. c. 268A. For guidance on that statute, you should contact the State Ethics Commission at 17-727-0060.